



**DEPARTMENT OF THE NAVY**  
BOARD FOR CORRECTION OF NAVAL RECORDS  
701 S. COURTHOUSE ROAD, SUITE 1001  
ARLINGTON, VA 22204-2490

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Docket No: 4006-22

Ref: Signature Date

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Dear Petitioner:

This is in reference to your application for correction of your naval record pursuant to Section 1552 of Title 10, United States Code. After careful and conscientious consideration of relevant portions of your naval record and your application, the Board for Correction of Naval Records (Board) found the evidence submitted insufficient to establish the existence of probable material error or injustice. Consequently, your application has been denied.

Although you did not file your application in a timely manner, the statute of limitation was waived in accordance with the 25 August 2017 guidance from the Office of the Under Secretary of Defense for Personnel and Readiness (Kurta Memo). A three-member panel of the Board, sitting in executive session, considered your application on 2 December 2022. The names and votes of the panel members will be furnished upon request. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application together with all material submitted in support thereof, relevant portions of your naval record, and applicable statutes, regulations, and policies, to include the Kurta Memo, the 3 September 2014 guidance from the Secretary of Defense regarding discharge upgrade requests by Veterans claiming post-traumatic stress disorder (PTSD) (Hagel Memo), and the 25 July 2018 guidance from the Under Secretary of Defense for Personnel and Readiness regarding equity, injustice, or clemency determinations (Wilkie Memo). The Board also considered the advisory opinion (AO) furnished by a qualified mental health professional, which was previously provided to you. Although you were afforded an opportunity to submit an AO rebuttal, you chose not to do so.

You enlisted in the U.S. Navy and began a period of active duty on 10 July 1978. On 7 February 1979, you were counseled regarding your minor military infractions and advised that continue unsatisfactory military behavior could result in disciplinary action. On 22 February 1979, you received non-judicial punishment (NJP) for unauthorized absence (UA). On 3 April 1979, the suspended portion of your NJP was vacated and, the following day, you were disenrolled from Nuclear Power Training program. On 23 August 1979, you received your second NJP for disobeying a lawful order. You began a period of UA, on 13 November 1979, until you were

apprehended on 28 June 1980. On 22 July 1980, you admitted to receiving a DWI in Louisiana and experimenting with drugs. On 26 August 1980, you were found guilty at Summary Court-Martial (SCM) for 228 days UA. You were then counseled again regarding any further misconduct may result in disciplinary action but include consideration of all misconduct may result in punitive or Other than Honorable (OTH) discharge. You were also counseled regarding drug abuse and that you were no longer eligible for the drug exemption program on 26 August 1980. Again you were counseled regarding your misconduct, on 25 September 1980, and warned that further misconduct may result in disciplinary action but also in processing for administrative discharge. You then commenced another period of UA, on 3 November 1980, that lasted until you were apprehended on 14 September 1981. On 14 December 1981, you were found guilty at Special Court-Martial (SPCM) for your 315 days UA, making a false official statement, and disobeying a lawful order. You were awarded a Bad Conduct Discharge (BCD) and confinement. After completion of appellate review, you were discharged on 29 March 1983 with a BCD.

The Board carefully considered all potentially mitigating factors to determine whether the interests of justice warrant relief in your case in accordance with the Kurta, Hagel, and Wilkie Memos. These included, but were not limited to, your desire to upgrade your discharge character of service and change your separation code. You contend that after being dropped from power school, you were sent to the fleet and was directed to perform machinist mate duties which led to depression. You further stated that you began to drink to self-cope with your depression, were not provided assistance or treatment, and this led to a decline in your behavior and performance continue to decline. You argue that you became resentful of the Navy, wanted to be discharged, and failed to understand the ramifications of your decisions. For purposes of clemency and equity consideration, the Board noted you provided a Department of Veterans Affairs document.

As part of the Board's review, a qualified mental health professional reviewed your request and provided the Board with an AO on 15 September 2022. The AO noted in pertinent part:

During military service, the Petitioner was diagnosed with a mental health condition (personality disorder). The diagnosis was based on observed behaviors and performance during his period of service, the information he chose to disclose, and the psychological evaluation performed by the mental health clinician as documented in his service records. A personality disorder diagnosis indicates lifelong characterological traits that are not compatible with military service. It is possible that his misconduct could be attributed to poor coping skills consistent with his personality disorder. However, when evaluated during military service, it was determined he was aware of his misconduct and responsible for his behavior. There is no evidence of another mental health condition, and the Petitioner has submitted no medical evidence in support of his claims. Additional records (e.g., complete post-service mental health records describing the Petitioner's mental health diagnosis, symptoms, and their specific link to his misconduct) may aid in rendering an alternate opinion.

The AO concluded, "it is my considered clinical opinion that there is insufficient evidence of a mental health condition that may be attributed to military service. There is evidence that the

Petitioner may have been experiencing a mental health condition during military service (personality disorder). There is insufficient evidence his misconduct could be attributed to a mental health condition other than his diagnosed personality disorder.”

After thorough review, the Board concluded your potentially mitigating factors were insufficient to warrant relief. Specifically, the Board determined that your misconduct, as evidenced by your NJPs, SCM, and SPCM, outweighed these mitigating factors. In making this finding, the Board considered the seriousness of your misconduct and concluded your misconduct showed a complete disregard for military authority and regulations. The Board also considered the negative impact your conduct likely had on the good order and discipline of your department. Further, the Board noted you provided no evidence, other than your statement, to substantiate your contentions. Additionally the Board concurred with the AO that there is insufficient evidence your misconduct could be attributed to a mental health condition. As a result, the Board determined your conduct constituted a significant departure from that expected of a Sailor and continues to warrant a BCD characterization. Even in light of the Wilkie Memo and reviewing the record holistically, the Board did not find evidence of an error or injustice that warrants upgrading your characterization of service or granting an upgraded characterization of service as a matter of clemency or equity. Accordingly, given the totality of the circumstances, the Board determined your request does not merit relief.

You are entitled to have the Board reconsider its decision upon submission of new matters, which will require you to complete and submit a new DD Form 149. New matters are those not previously presented to or considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

12/14/2022

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